

HOGAN & HARTSON

L.L.P. DOCKET FILE COPY ORIGINAL

RECEIVED

MAY 2 1997

Writer's Direct Dial
(202) 637-6462

Federal Communications Commission
May 2, 1997 Office of Secretary

COLUMBIA SQUARE
555 THIRTEENTH STREET, NW
WASHINGTON, DC 20004-1109
TEL (202) 637-5600
FAX (202) 637-5910

BY HAND DELIVERY

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M St., N.W., Room 222
Washington, D.C. 20554

Re: GC Docket No. 95-21 – Amendment of Ex Parte Rules

Dear Mr. Caton:

Enclosed please find a petition for reconsideration of the Report and Order in the referenced docket submitted by Hogan & Hartson L.L.P. I am submitting the original and nine copies, plus an additional copy to be file-stamped and returned. Please contact me if you have any questions about this filing.

Respectfully submitted,

David L. Sieradzki

David L. Sieradzki

Enclosures

BRUSSELS BUDAPEST LONDON MOSCOW PARIS* PRAGUE WARSAW
BALTIMORE, MD BETHESDA, MD COLORADO SPRINGS, CO DENVER, CO MCLEAN, VA

No. of Copies rec'd
List ABOVE

028

RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAY 2 1997

Federal Communications Commission
Office of Secretary

DOCKET FILE COPY ORIGINAL

In the Matter of)

Amendment of 47 C.F.R. § 1.1200 et seq.)

Concerning Ex Parte Presentations in)

Commission Proceedings)

GC Docket No. 95-21

PETITION FOR RECONSIDERATION
OF HOGAN & HARTSON L.L.P.

Pursuant to Section 1.429 of the Commission's Rules, 1/ Hogan & Hartson L.L.P. submits this petition for reconsideration of the Report and Order in the above-captioned proceeding. 2/

Hogan & Hartson L.L.P. represents clients in a broad range of Commission proceedings, and is filing this petition to advance the public interest in promoting the fair and effective administration of the Commission's *ex parte* rules. Because of the importance of *ex parte* communications both to the Commission in gathering accurate information and to the public in communicating its views with decision-makers, it is essential that the *ex parte* rules continue to foster fair opportunities for parties to disclose pertinent information to the Commission.

1/ 47 C.F.R. § 1.429.

2/ *Ex Parte Presentations in Commission Proceedings*, Report and Order, GC Docket No. 95-21, FCC 97-92 (released Mar. 19, 1997) ("*Report and Order*"), 62 Fed. Reg. 15852 (Apr. 3, 1997) (to be codified at 47 C.F.R. § 1.1200 *et. seq.*)

The Commission is to be commended for clarifying and simplifying the rules governing *ex parte* contacts. We seek reconsideration, however, of one aspect of the new rules. We believe that, contrary to the decision in the Report and Order to apply "restricted" treatment as the default category, "permit but disclose" should be the default category for most proceedings, and that "restricted" treatment should apply only to a narrow group of specified quasi-judicial proceedings.

As the Commission originally proposed, 3/ the public interest would best be served if "permit but disclose" rather than "restricted" *ex parte* treatment were the default category. The opposite approach adopted in the Report and Order inhibits the "informal contacts between members of the public and an administrative agency [that are] the 'bread and butter' of the administrative process." 4/

The Report and Order specifies a list of particular types of proceedings to which "permit but disclose" rules will apply, and states that all other proceedings will be "restricted." 5/ We suggest, instead, that a list of "restricted" proceedings be specified, with "permit but disclose" as the default category.

This approach -- which would subject most proceedings to "permit but disclose" treatment except for a narrow group of quasi-judicial proceedings -- would

3/ Amendment of 47 C.F.R. § 1.1200 et seq. Concerning *Ex Parte* Presentations in Commission Proceedings, 10 FCC Rcd 3240, 3242 (1995) ("Notice")

4/ Notice at 3242, ¶ 17.

5/ Report and Order at 13.

better reflect the reality of how the Commission does business, and would better serve the Commission's interest in the free flow and collection of information and the public's interest in open communication with the Commission. First, to gather the information that is the critical basis for its decision-making process, the Commission depends almost entirely on voluntary submissions of information from representatives of the communications industry. "Permit but disclose" procedures provide a better format to obtain accurate, detailed, and representative information in proceedings which often involve complex issues of wide-spread public importance.

Second, using "restricted" as the default approach is likely to have unanticipated, and possibly unfair, consequences. Certain proceedings that would more reasonably be treated as "permit but disclose" given the nature of the issues to be resolved will become "restricted" under the new rules, placing the burden on Commission staff to take affirmative steps to relax the *ex parte* treatment. This could also create unfairness: for example, the Commission staff may be in the process of trying to resolve a dispute among parties through informal negotiations, which may depend in large part on meetings with parties and exchanges of information. Yet under the new rules, once a party submits a document setting out its position on the issues in dispute and "seeking affirmative relief" from the Commission, 6/ the matter could become "restricted," shutting down further discussions.

6/ See new rule § 1.1202(d)(1).

In the majority of proceedings, the interests of fairness and information-gathering can be best preserved by permitting *ex parte* communications with a timely disclosure requirement. Permitting *ex parte* communications, while requiring that they be disclosed publicly, promotes fairness and avoids stifling public input and debate. Accordingly, we respectfully request that the Commission reconsider the scheme for classifying proceedings adopted in the Report and Order.

For the foregoing reasons, Hogan & Hartson L.L.P. respectfully requests that the Commission reconsider the amendment of *ex parte* rules adopted in the Report and Order.

Respectfully submitted,

By: David Sieradzki
David L. Sieradzki
Eric H. Loeb
HOGAN & HARTSON L.L.P.
555 Thirteenth St., N.W.
Washington, D.C. 20554
(202) 637-6400

Dated: May 2, 1997